

Forest Service, USDA

§ 223.53

highest of the 8 calendar quarters immediately prior to the qualifying quarter. A qualifying quarter is a quarter where the applicable adjusted index is more than 15 percent below the average of such index for the 4 highest of the previous 8 calendar quarters. Qualifying quarter determinations will be made using the Producer Price Indices for the months of March, June, September, and December.

(3) A determination, made pursuant to paragraph (b)(2) of this section, that a drastic reduction in wood product prices has occurred, shall constitute a finding that the substantial overriding public interest justifies the contract term addition.

(c) *Granting market-related contract term additions.* When the Chief of the Forest Service determines, pursuant to this section, that a drastic reduction in wood product prices has occurred, the Forest Service is to notify affected timber sale purchasers. For any contract which has been awarded and has not been terminated, the Forest Service, upon a purchaser's written request, will add 1 year to the contract's terms, except as provided in paragraphs (c)(1) through (4) of this section. This 1-year addition includes time outside of the normal operating season.

(1) Additional contract time may not be granted for those portions of the contract which have a required completion date or for those portions of the contract where the Forest Service determines that the timber is in need of urgent removal or that timber deterioration or resource damage will result from delay.

(2) For each additional consecutive quarter, in which a contract qualifies for a market-related contract term addition, the Forest Service will, upon the purchaser's written request, add an additional 3 months during the normal operating season to the contract.

(3) No more than twice the original contract length or 3 years, whichever is less, shall be added to a contract's term by market-related contract term addition.

(4) In no event shall a revised contract term exceed 10 years as a result of market-related contract term additions.

(d) *Recalculation of periodic payments.* Where a contract is lengthened as a result of market conditions, any subsequent periodic payment dates shall be delayed 1 month for each month added to the contract's term.

[63 FR 24114, May 1, 1998]

§ 223.53 Urgent removal contract extensions.

(a) *Finding.* There is substantial, overriding public interest in extending National Forest System timber sale contracts for undamaged (green) timber not requiring expeditious removal in order to facilitate the rapid harvest of catastrophically damaged timber requiring expeditious removal on private or other non-National Forest System lands. Such an extension may be granted when a specific catastrophic event beyond the control of the landowner occurs on non-National Forest System lands that poses a threat to general forest health, public safety, and property. Catastrophic events include, but are not limited to, severe wildfire, wind, floods, insects and disease infestation, and drought.

(b) *Regional Forester determination.* If the Regional Forester determines that adequate cause for urgent removal extensions exists, Contracting Officers may extend a National Forest System timber sale contract, up to a maximum of 1 year, for the estimated amount of time required to harvest and process the damaged timber on non-National Forest System lands. The Contracting Officer may grant an urgent removal extension only when the Regional Forester verifies in writing that:

(1) A specific catastrophe occurred on the particular geographic area for which urgent removal extensions may be granted;

(2) There is a high risk that substantial timber quantities or values of the damaged non-National Forest System timber in the affected geographic area would deteriorate unless expeditiously removed;

(3) The manufacturing facilities or logging equipment capacity available to purchasers are insufficient to provide for both the rapid harvest of damaged non-National Forest System timber in need of expeditious removal and the continued harvest of undamaged

(green) timber under contract with the Forest Service; and

(4) Failure to harvest the damaged non-National Forest System timber promptly could result in the following:

(i) Significant private or other public resource loss,

(ii) Pose a threat to public safety, or

(iii) Create a threat of an insect or disease epidemic to National Forest System or other lands or resources.

(c) *Purchaser request.* In order to obtain an urgent removal extension on a National Forest System timber sale contract, a purchaser must make a written request to the Contracting Officer, which includes the following:

(1) An explanation of why the harvest of the damaged non-National Forest System timber in need of expeditious removal will prevent or otherwise impede the removal of undamaged (green) National Forest System timber within the term of the existing National Forest System contract(s);

(2) Documentation that the manufacturing facilities or logging equipment capacity available to a purchaser would be insufficient to provide for both the rapid salvage of damaged non-National Forest System timber in need of expeditious removal and continued harvest of undamaged (green) National Forest System timber under contract with the Forest Service; and

(3) A notarized statement that the purchaser will not hold the Forest Service liable for any damages or lost time incurred on the non-National Forest System and National Forest System contracts in the event that a request for an extension is delayed or denied, or for any damages under National Forest System contracts due to delay, suspension, modification, or cancellation (in whole or in part) subsequent to or during the extension.

(d) *Contracting Officer determination.* In order to grant an urgent removal extension, the timber sale Contracting Officer must verify the following:

(1) That it is likely that the undamaged (green) timber from National Forest System land would be delivered to the same manufacturing facilities as are needed to process the damaged non-National Forest System timber or the National Forest System timber sale contract would require the

use of the same logging equipment as is needed to remove the damaged non-National Forest System timber from the area affected by the catastrophe;

(2) That extension of the National Forest System contract will not be injurious to the United States and will protect, to the extent possible, the health of the National Forest System lands;

(3) That the urgent removal extension does not adversely affect other resource management objectives to be implemented by the National Forest System timber sale being extended;

(4) That the National Forest System timber sale contract to be extended is not a sale containing damaged, dead, or dying timber subject to rapid deterioration;

(5) That the National Forest System timber sale contract at issue has not been granted a previous urgent removal extension;

(6) That the revised National Forest System timber sale contract term will not exceed 10 years from the date the National Forest System contract was awarded;

(7) That the National Forest System contract is not in breach, and all work items, payments, and deposits are current; and

(8) That the purchaser has signed and had notarized the following statement:

By submission of this request, I release, waive, and abandon any and all claims against the United States for delay in the processing or denial of this request for an urgent removal extension of my National Forest System timber sale(s), contract number(s) _____, including, but not limited to, all claims for costs, expenses, attorney fees, compensatory damages, and exemplary damages arising out of or related to any non-National Forest System timber sale contract(s) and the National Forest System timber sale(s) contract(s) identified above. Should my request be granted, I release, waive, and abandon any and all claims against the United States due to delay, suspension, modification, or cancellation (in whole or in part) of the extended National Forest System timber sale contract(s), including, but not limited to, all claims for costs, expenses, attorney fees, compensatory damages, and exemplary damages. This liability limitation supersedes any other compensation or liability provisions set forth in the timber sale contract, Federal regulation, or the common law.

Forest Service, USDA

§ 223.61

(e) *Execution of contract extension.* An urgent removal extension of a National Forest System timber sale contract is executed through a mutual agreement contract modification pursuant to § 223.112, which must include specific contract provisions. An agreement to modify a contract must identify the specific provision(s) of the contract being modified and must include the following terms and conditions:

(1) Purchasers must make cash payment to the Forest Service at the time of modification granting an urgent removal extension in consideration for the additional contract term. Such payment (P) shall be equal to interest on the difference between current contract value (CCV) at the time of the modification and the credit balance of any deposits (D). The interest rate (i) shall be the prevailing U.S. Department of the Treasury current value of funds rate in effect at time of modification. The time period (t) to be used in the calculation of interest shall be the number of months of contract extension granted. Payments so made shall not be refunded as excess cash deposits. This calculation is expressed by the following formula:

$$P=i(CC\bar{V}-D)(t/12)$$

(2) Purchasers must make cash payment to cover the costs of remarking timber on the sale area or reestablishing cutting unit boundaries if the Contracting Officer determines such work is necessary.

(3) For sales subject to stumpage rate adjustment, future adjustment of tentative rates will not result in rates less than the current contract rates at the time of the extension.

(f) *Information collection.* The information required of a purchaser to request an extension of an National Forest System timber sale contract, as outlined in paragraph (c) of this section, to facilitate expeditious removal of timber from non-National Forest System lands constitutes an information collection requirement as defined in 5 CFR Part 1320 and has been assigned Office of Management and Budget control number 0596-0167.

[67 FR 70169, Nov. 21, 2002]

APPRAISAL AND PRICING

§ 223.60 Determining fair market value.

The objective of Forest Service timber appraisals is to determine fair market value. Fair market value is estimated by such methods as are authorized by the Chief, Forest Service, through issuance of agency directives (36 CFR 200.4). Valid methods to determine fair market value include, but are not limited to, transaction evidence appraisals, analytical appraisals, comparison appraisals, and independent estimates based on average investments. Pertinent factors affecting market value also considered include, but are not limited to, prices paid and valuations established for comparable timber, selling value of products produced, estimated operating costs, operating difficulties, and quality of timber. Considerations and valuations may recognize and adjust for factors which are not normal market influences.

[61 FR 5685, Feb. 14, 1996]

§ 223.61 Establishing minimum stumpage rates.

The Chief, Forest Service, shall establish minimum stumpage rates, i.e., "base rates," for species and products on individual National Forests, or groups of National Forests. Timber shall be sold for appraised value or minimum stumpage rates, whichever is higher. No timber may be sold or cut under timber sale contracts for less than minimum stumpage rates except to provide for the removal of insect-infested, diseased, dead or distressed timber or in accordance with contract provisions specifically providing for catastrophically-affected timber and incidental amounts of material not meeting utilization standards of the timber sale contract. For any timber sale offering where deposits are to be required for reforestation under the Act of June 9, 1930, as amended (46 Stat. 527; 16 U.S.C. 576-576b) which exceed the value of the established minimum stumpage rates, the minimum rates may be increased by the approving officer as necessary to the amount of such required reforestation deposits and a minimum deposit to the Treasury. Minimum rates in timber sale contracts will not